



Paper No. 9

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OFFICE OF PETITIONS

In re Application of
Pankaj Malhotra, et al
Application No. 09/735,291
Filed: July 28, 2000
Attorney Docket No. 14013-13C

ON PETITION

This is a decision on the renewed petition to revive the above-identified application under the provisions of 37 CFR 1.137(b), filed July 28, 2003.

The petition is **GRANTED**.

The application became abandoned for a failure to timely file an oath or declaration in compliance with 37 CFR 1.63 and the surcharge required by a Decision Granting Petition mailed January 24, 2001. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned after midnight February 24, 2001.

On April 25, 2003, a petition to revive the application was filed; however, the petition was dismissed in a decision mailed June 30, 2003, since the required reply was not included. In response, the present renewed petition was filed, accompanied by the requisite surcharge and a declaration under 37 CFR 1.63.

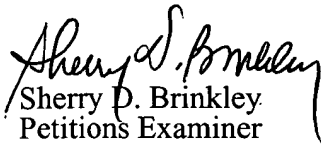
37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The statement contained in the instant petition is being construed as the statement required by 37 CFR 1.137(b)(3).

It is noted that petitioner again requests a refund of the \$1,300.00 fee for a petition to revive. As noted in the decision mailed June 30, 2003, a petition under 37 CFR 1.137(b) is necessary to overcome the abandonment of this application. 35 USC 41(a)(7) requires a petition fee on filing a petition under 37 CFR 1.137(b). Since this is a statutory requirement, the fee cannot be waived. Consequently, the request for a refund of the petition fee is DENIED.

In addition, petitioner appears to be requesting a patent term adjustment, stating that "the time from the filing of the petition on 1/3/01...until the time when a decision on the present petition being filed is rendered, be excluded from the time that it will take to prosecute the subject application and thus added to the 20 year lifetime..." Since an application for patent term adjustment may not be filed earlier than the date of the mailing of a notice of allowance, this request is premature and will not be considered on the merits. See 37 CFR 1.705.

Telephone inquires related to this decision should be directed to the undersigned at (703) 305-9220. Telephone inquiries related to OIPE processing should be directed to their hotline at (703) 308-1202.

The application file is being forwarded to Initial Patent Examination Division for further processing with a filing date of July 28, 2000, using the declaration filed July 28, 2003.



Sherry D. Brinkley
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for Patent Examination Policy